

FISCAL NOTE

Bill #: SB0262

Title: Compensation for takings

Primary Sponsor: Curtiss, A

Status: As Introduced

Sponsor signature	Date	David Ewer, Budget Director	Date
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Fiscal Summary

	<u>FY 2006 Difference</u>	<u>FY 2007 Difference</u>
Expenditures:		
State Special Revenue	\$0	\$122,400
Federal Special Revenue	\$0	\$1,101,600
Revenue:		
State Special Revenue	\$0	\$0
Federal Special Revenue	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|---|
| <input checked="" type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Transportation (DOT)

1. The Department of Transportation, as it relates to access control, is not exempted from this bill.
2. DOT purchases approximately 925 parcels of real property each year totaling \$11,000,000. The number of parcels is estimated to be 950 in FY 2006 and FY 2007.
3. Approximately 7-10 percent of parcels, 95 parcels, go to condemnation. Of those parcels, 90 percent of the parcels in condemnation, 85 parcels, involve access.
4. There are another approximate 85 parcels involving access that are settled without going to condemnation.
5. Therefore, approximately 170 parcels involving access will be effected by this bill per year.
6. The average additional compensation will be between \$5,000 and \$25,000 for each parcel. For purposes of this fiscal note, \$12,000 per parcel will be used.
7. The total increase to DOT would be \$2,040,000 per year. (170 parcels x \$12,000) Since the bill is effective on passage by the electorate, only 60 percent of the impact will occur in FY 2007.
8. Funding is assumed to qualify at a 90/10 split between federal and state dollars.

Department of Environmental Quality (DEQ)

9. SB 262 does not require compensation for decreases in property values that result from the adoption or enforcement of statutes or rules that are required by federal law or regulations or that are adopted or enforced to protect public health or safety.

Fiscal Note Request SB0262, As Introduced

(continued)

10. Most of the Department of Environmental Quality's (DEQ) air quality, water quality, solid waste, hazardous waste, sanitation in subdivisions, and strip mine regulatory standards would not trigger the compensation requirement in SB 262 because they are either required by federal law or rule or have been adopted to protect public health or safety. Some regulatory requirements may not meet these exclusions.
11. It is not possible to determine with certainty whether SB 262 would be interpreted by the courts to require compensation only for decreases in land value that result from the adoption and enforcement of traditional land use regulations only, or whether the bill would also require compensation for application of environmental regulations that result in decreases in value because the regulation indirectly precludes a use of property or imposes requirements that do not prohibit a use but that require significant expense for compliance.
12. Traditional land use regulations restrict the types of use, density of use, aesthetic impact of uses (e.g., requirements for design and placement of structures on land), or the effect of land use on community values (e.g. prohibition on adult entertainment establishments). If only traditional land use regulations trigger the compensation requirement in HB 262, then DEQ would rarely, if ever, impose restrictions that trigger the compensation.
13. The enforcement of environmental regulations that protect the environment but not public health or safety can indirectly restrict the use that can be made of land. If the courts were to interpret SB 262 to include decreases in value in these instances, then DEQ may occasionally impose restrictions that require compensation in amounts that could range from several thousand dollars to millions of dollars. More precise cost estimation is not possible.
14. If SB 262 were interpreted to require compensation for decreases in value to land that result from imposition of regulatory requirements that involve significant expense (e.g. reclamation of mines), then DEQ would probably take several regulatory actions per year that could trigger the compensation requirements in amounts that could range from several thousand dollars to millions of dollars. More precise cost estimation is not possible.

Department of Natural Resources and Conservation (DNRC)

15. It is not possible to estimate the fiscal impact of this legislation based on the following assumptions.
16. If passed by the electorate in November 2006, claims made under this bill would require an appraisal of the affected property prior to a floodplain study and following a floodplain study to determine the impact to fair market value. Because it is impossible to determine the number of property owners that might make a claim, an appraisal of every property would be necessary as a baseline prior to any new floodplain studies. Those properties that have already been found to be on a floodplain that did not have a timely appraisal prior to the definition of the floodplain would not have that baseline to determine the change to the property's value.
17. It is not possible to determine the number of appraisals that might be required. Therefore, it is not possible to estimate the fiscal impact this legislation would have on the Water Resources Division with any degree of accuracy, but the compensation could be in the millions. In the recent past, the Division has conducted floodplain studies of a reach of stream or river of 5 to 10 miles in length per year. Floodplain studies are conducted in areas where there is a need because of increased development to identify a 100-year floodway. The aerial extent of the mapped 100-year floodplain varies from stream to stream because of various sizes of the contributing drainage basin and extent of the natural floodway.
18. If there is a claim, this bill also requires the department to pay reasonable costs and attorney fees incurred if the land use regulation continues to apply to the subject property more than 180 days after the written demand for compensation. It is not possible to estimate the numbers of claims where the land use regulation will continue to apply.
19. Given the extensive cost, it is likely that no floodplain studies would be conducted or adopted by the Department or political subdivision. Without a 100-year floodplain identified, anyone applying thru a

Fiscal Note Request SB0262, As Introduced

(continued)

bank for a loan would have to hire an engineer and surveyor to show the property is not in a 100-year floodplain or buy flood insurance in order to get loan approval. In order for a bank to sell a mortgage on the secondary market, flood insurance or flood appraisal has to be completed.

FISCAL IMPACT:

Department of Transportation (DOT)

	<u>FY 2006 Difference</u>	<u>FY 2007 Difference</u>
<u>Expenditures:</u>		
Operating Expenses	\$0	\$1,224,000
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	0	122,400
Federal Special Revenue (03)	<u>0</u>	<u>1,101,600</u>
TOTAL	\$0	\$1,224,000

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

State Special Revenue (02)	(\$0)	(\$122,400)
Federal Special Revenue (03)	(\$0)	(\$1,101,600)

LONG-RANGE IMPACTS:

This would eliminate one to two moderate highway construction projects per year.

TECHNICAL NOTES:

1. Department of Transportation (DOT)

2. Section 3 (7) subsection (1) (b) perhaps exempts highway access issues under the protection of public health and safety. If this were strengthened to clearly exempt highway access issues the fiscal note would be near zero.

Department of Environmental Quality (DEQ)

3. Subsection (1) of section 3 and paragraph (4) (b) of section 3 are inconsistent. Subsection (1) provides that SB 262 applies to land use regulations adopted or enforced prior to the effective date of SB 262. Paragraph (4)(b) is written with the assumption that that SB 262 applies to land use regulations adopted after the effective date of SB 262 because it provides a statute of limitation for claims based those regulations.
4. The definition of the term "land use regulation" is not clear. Use of the term "includes but is not limited to" in the definition adds additional ambiguity. The definition should be amended to clearly indicate whether SB 262 applies to regulations that were adopted to protect the environment but that are not traditional land use regulations in that they do not restrict types of uses, density of uses, aesthetic impact of uses (e.g., requirements for design and placement of structures on land), or the effect of land uses on community values (e.g. prohibition on adult entertainment establishments).
5. The Sanitation in Subdivisions Act (Title 76, Chapter 4) does not impose traditional land use regulations. It protects public health by regulating water supplies, sewage, and solid waste disposal in subdivisions. If the bill is intended to apply only to traditional land use regulations, the references to the Sanitation in Subdivisions Act should be removed from section 2 and section 11 should be deleted entirely